

09-16852

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES ROTHERY and ANDREA HOFFMAN,

Plaintiffs - Appellants,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants - Appellees.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:08-cv-02064-JAM-KJM
The Honorable John A. Mendez, Judge

**JOINT MOTION BY DEFENDANTS – APPELLEES
FOR FURTHER STAY OF
APPELLATE PROCEEDINGS**

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I. RELIEF SOUGHT

Appellees, County of Sacramento, Lou Blanas, John McGinnis, Tim Sheehan and Kamala D. Harris, move this Court for an extension of the current stay of proceedings in this matter. At present, appellees' answering briefs are due March 31, 2015. Appellees request that the current stay be extended until ninety (90) days following issuance of the Ninth Circuit's mandate in *Peruta v. County of San Diego*, No. 10-56971.

II. POSITIONS OF ALL COUNSEL

All appellees, through the undersigned counsel, join in this Motion for Further Stay of Appellate Proceedings.

All appellants are represented by Gary W. Gorski. Mr. Gorski has stated to counsel that he does not object to a continued stay of appellate proceedings. (See ¶ 6 of the attached Joint Declaration.)

III. NEED FOR EXTENSION OF THE CURRENT STAY

The present appeal has been stayed several times pending the resolution of other appeals. This Court's present stay order was entered December 23, 2014, and stays proceedings until March 31, 2015. (Dkt. # 63.) As set forth in that order, "At or prior to the expiration of the stay of appellate proceedings, the appellees shall file the answering briefs or file a motion for appropriate relief."

There is good reason to stay the present appeal pending resolution of the *Peruta* appeal. There is considerable overlap between *Peruta* and the present case. Both cases involve a constitutional challenge to California's Concealed Carry Weapon (CCW) statutes, and both cases present the underlying issue whether the Second Amendment extends to the right to carry a loaded handgun in public. On February 13, 2014, the *Peruta* panel—by a 2-1 vote—concluded that San Diego County's CCW permitting requirement impermissibly infringes on the Second Amendment right to bear arms. (*Peruta* Dkt. # 117.) On February 28, 2014, the *Peruta* panel issued an order staying issuance of the mandate and extending the deadline to file a petition for rehearing en banc pending a decision on Proposed Intervenor State of California's motion to intervene. (*Peruta* Dkt. # 126.) On November 12, 2014, California's motion to intervene was denied. (*Peruta* Dkt. # 156.) On November 26, 2014, California filed a petition for rehearing en banc of the panel order denying California's motion to intervene. (*Peruta* Dkt. # 157.) On December 3, 2014, the panel filed an order directing Plaintiff-Appellants to file a response to California's petition for rehearing en banc. (*Peruta* Dkt. # 160.) On the same date, the panel stated that a judge had made a sua sponte call on whether the case should be reheard en banc and order the parties to file simultaneous briefs on whether the case

should be heard en banc. (*Peruta* Dkt. # 161.) The parties and several amici have filed briefs in response to Docket Numbers 160 and 161.

Peruta, once it is final, may resolve many of the issues presented in the present appeal. A further stay will allow the parties to better brief the Second Amendment issues presented here, and will allow the Ninth Circuit to avoid potentially conflicting or inconsistent decisions on the constitutionality of California's CCW licensing regime.

Accordingly, appellees request that the current stay be extended until ninety (90) days following issuance of the Ninth Circuit's mandate in *Peruta v. County of San Diego*, No. 10-56971.

Dated: March 10, 2015

KAMALA D. HARRIS
Attorney General of California

/s/ GEORGE WATERS

GEORGE WATERS
Deputy Attorney General
*Attorneys for Appellee
Kamala D. Harris*

Dated: March 10, 2015

LONGYEAR, O'DEA & LAVRA

/s/ Amanda L. McDermott

AMANDA L. MCDERMOTT
*Attorneys for Appellees
County of Sacramento, Lou Blanas,
John McGinnis, Timothy Sheehan*

**JOINT DECLARATION OF AMANDA L. MCDERMOTT AND
GEORGE WATERS IN SUPPORT OF APPELLEES'
MOTION FOR FURTHER STAY**

We, Amanda L. McDermott, and George Waters, declare as follows:

1. We are attorneys licensed to practice law before all courts in the State of California and are admitted to practice before this Court. Amanda L. McDermott is an associate of the law firm of Longyear, O'Dea & Lavra, LLP, counsel of record for Defendants/Appellees, County of Sacramento, Lou Blanas, John McGinnis, and Tim Sheehan. George Waters is a Deputy Attorney General for the State of California and counsel of record for Defendant/Appellee Kamala D. Harris, Attorney General of the State of California.

2. In the present *Rothery* appeal, appellants' opening brief was filed on May 6, 2010. (Dkt. # 11.) Thereafter, appellate proceedings, including the filing of appellees' answering briefs, have been stayed by a series of court orders dated May 24, 2010 (Dkt. # 15), August 16, 2010 (Dkt. # 18), October 18, 2010 (Dkt. # 20), January 18, 2011 (Dkt. # 22), March 24, 2011 (Dkt. # 25), June 8, 2011 (Dkt. # 27), August 30, 2011 (Dkt. # 35), November 15, 2011 (Dkt. # 37), February 10, 2012 (Dkt. # 39), May 14, 2012 (Dkt. # 43), August 30, 2012 (Dkt. # 45), November 30, 2012 (Dkt. # 47), February 19, 2013 (Dkt. # 49), May 15, 2013 (Dkt. # 51),

August 13, 2013 (Dkt. # 53), November 22, 2013 (Dkt. # 55), March 25, 2014 (Dkt. #57), July 11, 2014 (Dkt. # 59), September 25, 2014 (Dkt. # 61), and December 23, 2015 (Dkt. # 63). At present, appellees' answering briefs are due March 31, 2015.

3. The present case (*Rothery*) was stayed several times pending resolution of *Mehl v. Lou Blanas, et al.*, Ninth Circuit No. 08-15773. Both cases involve a constitutional challenge to California's Concealed Carry Weapon (CCW) statutes. *Mehl* was argued twice to the Ninth Circuit: June 11, 2009 (*Mehl* Dkt. # 26), and December 10, 2012 (*Mehl* Dkt. # 50). On July 8, 2013, *Mehl* was resolved without resolving the constitutional issues presented. (*Mehl* Dkt. # 76.)

4. *Peruta v. County of San Diego*, Ninth Circuit No. 10-56971, also presents a constitutional challenge to California's CCW statutes. On February 13, 2014, the *Peruta* panel—by a 2-1 vote—concluded that San Diego County's CCW permitting requirement impermissibly infringes on the Second Amendment right to bear arms. (*Peruta* Dkt. # 117.) On February 28, 2014, the *Peruta* panel issued an order staying issuance of the mandate and extending the deadline to file a petition for rehearing en banc pending a decision on Proposed Intervenor State of California's motion to intervene. (*Peruta* Dkt. # 126.) On November 12, 2014, California's

motion to intervene was denied. (*Peruta* Dkt. # 156.) On November 26, 2014, California filed a petition for rehearing en banc of the panel order denying its motion to intervene. (*Peruta* Dkt. # 157.) On December 3, 2014, the panel filed an order directing Plaintiff-Appellants to file a response to California's petition for rehearing en banc. (*Peruta* Dkt. # 160.) On the same date, the panel stated that a judge had made a sua sponte call on whether the case should be reheard en banc and order the parties to file simultaneous briefs on whether the case should be heard en banc. (*Peruta* Dkt. # 161.) The parties and several amici have filed briefs in response to Docket Numbers 160 and 161. *Peruta* may resolve many of the issues presented in the present appeal.

5. Appellees have exercised diligence in this matter, but will have only one opportunity to address the Second Amendment and related issues raised by appellants. Because the constitutional and statutory issues presented here are similar to those presented by the *Peruta* appeal (both cases involve a constitutional challenge to California's Concealed Carry Weapon (CCW) statutes), it is appropriate to await for final resolution of *Peruta* prior to any further briefing in *Rothery*. The requested continuation of the stay to a date until ninety (90) days following issuance of the Ninth

Circuit's mandate in *Peruta* is therefore reasonable and will enable appellees' counsel to fulfill their obligations to their clients and to this Court.

6. All Plaintiffs/Appellants in this action are represented by Gary W. Gorski. On March 9, 2015, Mr. Gorski stated by email that he does not object to a continued stay of appellate proceedings.

Declarants declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

EXECUTED this 10th day of March, 2015, at Sacramento, California.

LONGYEAR, O'DEA & LAVRA, LLP

KAMALA D. HARRIS

Attorney General of California

/s/ Amanda L. McDermott

/s/ GEORGE WATERS

AMANDA L. McDERMOTT
Attorneys for Appellees
County of Sacramento, Lou Blanas,
John McGinnis, Timothy Sheehan

GEORGE WATERS
Attorneys for Appellee
Kamala D. Harris

CERTIFICATE OF SERVICE

Case Name: **James Rothery, et al. v. Lou
Blanas, et al. (on Appeal 9th
COA)**

No. **09-16852**

I hereby certify that on March 10, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**JOINT MOTION BY DEFENDANTS-APPELLEES FOR FURTHER STAY OF
APPELLATE PROCEEDINGS/JOINT DECLARATION OF AMANDA L.
MCDERMOTT AND GEORGE WATERS IN SUPPORT OF APPELLEES' MOTION
FOR FURTHER STAY**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 10, 2015, at Sacramento, California.

Tracie L. Campbell
Declarant


Signature